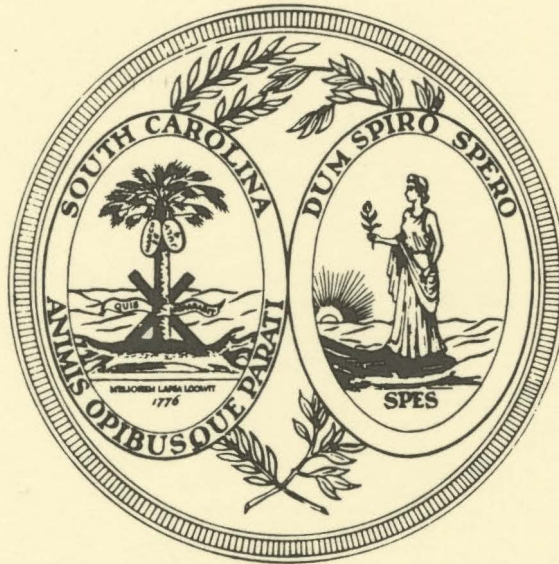


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A Sunset Review of the
Charleston Commission of
Pilotage
May 3, 1985

THE STATE OF SOUTH CAROLINA

GENERAL ASSEMBLY

LEGISLATIVE AUDIT COUNCIL

A SUNSET REVIEW OF THE

CHARLESTON COMMISSION OF PILOTAGE

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BACKGROUND AND HISTORY

In 1789, Congress granted the states authority to regulate harbor pilots. State authority is restricted to ships engaged in foreign trade, while the federal government has authority over American registered vessels engaged in coastwise trade. In the past three years, 3,877 (72%) of the ships which docked at the Port of Charleston were engaged in foreign trade and 1,510 (28%) were American registered under authority of the U.S. Coast Guard (USCG). These figures exclude military ships.

The Commission of Pilotage for the Port of Charleston was established with passage of Act 48 of 1872. Harbor pilots are licensed by the Commission and are responsible for guiding ships in and out of, and within, the Port of Charleston and its tributaries. The Commission's powers and duties, stated in Section 54-15-40 et. seq. of the South Carolina Code of Laws, include setting pilotage rates, investigating accidents, appointing the Board of Examiners, approving apprenticeships, maintaining a pilot register, and suspending or revoking licenses.

The Commission is comprised of five members: the Chairman of the South Carolina Ports Authority, the President of the Charleston Pilots Association, and three members appointed by the Charleston County Council. Commission members are appointed for three-year terms.

Qualifications for licensure as a harbor pilot include a college degree (or an unlimited Ocean Third Mate's license), proof of good moral character, good physical condition, six years of training and passage of five examinations. Prior to training or taking any examination, an individual must receive the approval of a majority of the harbor pilots.

Section 54-15-130 limits the number of Charleston pilots to 15. The 15 pilots are members of the Charleston Pilots Association, a private organization which provides harbor pilot services for the Port of Charleston. The scope of this sunset review was therefore limited to the functions of the Commission and did not include those of the Association.

Twenty-three of the 24 states that can regulate harbor pilots choose to do so, while pilotage in the Great Lakes is the sole responsibility of the federal government (see p. 8). Seven southeastern states (Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina and Virginia) regulate harbor pilots.

SUNSET QUESTIONS AND FINDINGS

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY.

The Commissioners of Pilotage set prices to be charged by harbor pilots for their services. A December 1984 study by the State Ports Authority reflects expenses incurred in port, including harbor pilot fees (see Table 1). Based on interviews with seven shipping lines/agents, the Audit Council estimates that harbor pilot fees account for approximately 14% of all port expenses, and that the average pilotage fee for the Port of Charleston is \$1,300.

TABLE 1
PILOTS, TUGS, LINE HANDLERS, DOCKING PILOTS

	CHARLESTON	SAVANNAH	JACKSONVILLE	BALTIMORE	NORFOLK	WILMINGTON
Miles to Open Sea	7	28	22	150	20	23
Pilots	\$1,680.00	\$1,692.00	\$1,800.00	\$3,024.00	\$1,770.00	\$1,835.00
Tugs	2,280.00	2,496.00	3,055.50	4,000.00	4,650.00	2,140.00
Line Handlers	619.00	.555.00	642.75	500.00	1,000.00	812.00
Docking Pilots	<u>195.00</u>	<u>340.00</u>	<u>185.00</u>	<u>260.00</u>	<u>200.00</u>	<u>300.00</u>
Total Costs	<u>\$4,774.00</u>	<u>\$5,083.00</u>	<u>\$5,683.25</u>	<u>\$7,784.00</u>	<u>\$7,620.00</u>	<u>\$5,087.00</u>

Statistics based on average container vessel:

Vessel: 30 Feet Draft
10,000 NRT
14,000 GRT
700 Feet in Length
45 Foot Molded Depth
75 Foot Beam

Source: State Ports Authority, December 1984.

Officials with the seven shipping lines/agents interviewed by the Council indicated that harbor pilot fees represent a small portion of the total cost involved in shipping goods. The shipping lines/agents maintained that fees have a direct impact on the shipowner's expenses, but add little to the price of consumer goods on a per item basis. There is no cost of regulation other than an examination fee of \$20 per examiner which is paid to the Board of Examiners (see p. 21).

Certain provisions of the pilotage statutes serve to restrict entry to the profession and are reviewed below.

Pilotage in South Carolina a Monopoly

Section 54-15-130 limits the number of pilots for the Charleston harbor to 15, thereby removing competition from the profession. The number of pilots is limited by statute or by Commission discretion in the other six southeastern states which regulate harbor pilots. Due to this restriction on the availability of service, the potential exists for prices to be higher than if the system were one of free enterprise.

Justifications offered in South Carolina and in other states for this limitation include: (1) by guaranteeing a certain volume of business, the pilot association is able to maintain the necessary capital investment, (2) the public

can be assured of pilot availability on short notice and in adverse weather conditions, and (3) since pilots are assured good incomes, turnover is reduced, standards can be high, and the public is assured efficient and safe service.

At the request of the Audit Council, Section 54-15-10 et. seq. of the South Carolina Code of Laws were reviewed by the Attorney General, relative to federal and State antitrust laws. In an opinion dated February 28, 1985, the Attorney General stated:

...it is apparent that the General Assembly has clearly articulated and affirmatively expressed a State policy which mandates that the pilotage profession remain anticompetitive in nature. Unequivocally, the Legislature has displaced competition with regulation.

The Attorney General concluded that a court would hold the State's regulation of pilotage subject to immunity from federal antitrust actions, and would hold that the State's regulation of pilotage is not subject to State antitrust laws.

Apprenticeship Approval

A provision of the statutes governing harbor pilots may unnecessarily restrict entry into the profession. Section 54-15-100 requires that the Commission of Pilotage for the Port of Charleston and a majority of the harbor pilots approve applicants for apprenticeship.

All 15 state-licensed pilots in Charleston belong to the Charleston Pilots Association. Since State law requires

that a majority of pilots must approve apprentices, the Association could potentially restrict entry into the profession of any individual not meeting its approval.

. A 1978 Council of State Governments report states:

"Requirements and evaluation procedures for entry into an occupation should be clearly related to safe and effective practice."

In three (Florida, Mississippi and North Carolina) of the other six southeastern states which regulate pilotage, apprenticeship approval by a majority of the harbor pilots is not required.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING SECTION 54-14-100 OF THE SOUTH
CAROLINA CODE OF LAWS TO DELETE PILOT
APPROVAL OF APPRENTICES.

- (2) DETERMINE THE ECONOMIC, FISCAL AND OTHER IMPACTS THAT WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

After reviewing the statutes and operations of the Commission of Pilotage for the Port of Charleston, the Audit Council concludes that the Commission should be reauthorized pursuant to Act 608 of 1978. This conclusion is based upon an examination of the responsibility of harbor pilots relative to public

safety and welfare, regulation of pilotage in other states, and an examination of sunset reviews conducted in other states.

Harbor pilots are responsible for safely guiding ships into and out of, and within, the port and its tributaries. Unsafe harbor conditions can result in injury, death and environmental damage, as well as damage to ships, bridges, and other property. According to the President of the Charleston Pilot's Association, state-licensed harbor pilots in Charleston performed pilotage services for approximately 2,000 ships in 1981. According to a State Ports Authority official, the value of cargo handled through the Port of Charleston in 1981 was approximately \$5 billion, 11th among U.S. ports.

In the absence of the Commission of Pilotage for the Port of Charleston, there would be no State control of pilotage in Charleston. The United States Coast Guard (USCG), however, could assume the licensing and regulation of harbor pilots in the absence of State regulation. The "Ports and Waterways Safety Act of 1972" as amended by the "Port and Tanker Safety Act of 1978" states:

"The Secretary (of the department in which the USCG is operating) may require federally licensed pilots...on any self-propelled vessel...engaged in foreign trade...in areas and under circumstances where a pilot is not otherwise required by State law."
[Emphasis Added]

Twenty-three of the 24 maritime states that can regulate pilotage choose to do so. In California, regulation differs from port to port. Pilots in the Sacramento and Stockton area must have a Coast Guard pilot license but are not subject to state or local regulation. Should South Carolina forego State regulation of pilotage, it is conceivable that the interests of the State of South Carolina could be different than the interests of the federal government, and resulting federal policies might not be in the State's best interest. Thus, although the federal government can regulate Charleston harbor pilotage, the Commission provides the potential for direct public access as a local board accountable to the State and its citizens.

Nine states, (Alabama, Alaska, Delaware, Florida, Hawaii, Maine, Maryland, Oregon, and Rhode Island) have conducted sunset reviews of their pilotage statutes. Seven (78%) of the nine recommended continued State regulation of pilotage. Maine recommended termination due to the fact that the Commission did not perform a unique function that required its continued existence. The Alabama report contained no recommendation for either continuation or termination.

Four states' reports, while noting that the USCG could take over in the absence of state regulation of pilotage, recommended continued state regulation.

Reasons cited for recommending continued regulation included: 1) the acts of harbor pilots can have a significant impact on the state's general welfare through oil spills or cruise ship accidents, 2) federally licensed pilots may not be as knowledgeable concerning local pilotage routes, 3) the federal government is not required to assume regulation in the absence of state regulation, 4) there is no clear advantage to federal regulation over state regulation, and 5) regulation is not a viable alternative due to the increased burden it would place on the USCG.

RECOMMENDATION

THE COMMISSION OF PILOTAGE FOR THE PORT
OF CHARLESTON SHOULD BE CONTINUED
PURSUANT TO ACT 608 OF 1978.

- (3) DETERMINE THE OVERALL COST, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The Commission of Pilotage for the Port of Charleston receives no State appropriation. All operating expenses of the Commission, such as postage, are paid by the Commission members. These expenses are estimated at \$100 per year. The Commission members

serve as volunteers and receive no compensation from the State.

The Commission does not receive fee revenues. However, the Board of Examiners, which is appointed by the Commission to administer examinations to pilots, does collect an exam fee. The fee is \$20 per examiner and is paid directly to the members of the Board of Examiners. This issue is discussed in greater detail on page 21.

- (4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAM OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Audit Council reviewed the operation of the Charleston Commission of Pilotage, and has noted three problems which may affect its efficiency. These are discussed below.

Record-Keeping and Filing System

A review of the Commission's records revealed a need for improvement. These records pertained to accidents, complaints, minutes, exams, and other Commission business. Commission records dating back to 1979 were maintained in two large file folders, in no particular order.

Systematic filing procedures are needed to ensure accurate and complete records, and will contribute to the efficiency of Commission operations.

RECOMMENDATION

THE COMMISSION SHOULD IMPLEMENT A SYSTEM
TO ENSURE ACCURATE FILING OF INFORMATION
RELATED TO ITS OPERATIONS.

Policies and Procedures Manual

The Commission of Pilotage does not have a policies and procedures manual. Policies need to address criteria for suspension or revocation of a pilot license, denial of an apprenticeship, investigation of accidents, complaint handling, and rate-setting. Policies should also clearly distinguish between accidents and incidents involving harbor pilots, for both reporting and handling purposes.

The lack of written policies and procedures can result in program inconsistency, as well as a lack of efficiency in program operations.

RECOMMENDATION

THE COMMISSION SHOULD MAINTAIN A
POLICIES AND PROCEDURES MANUAL.

Rate Setting Procedures

The Commission of Pilotage for the Port of Charleston has no formal procedures for setting pilotage rates. According to a Commission member, the Commission requests whatever information it feels is necessary to consider the rate request. This may include financial statements, pilot salary information and a comparison of rates in other ports. Rates have been increased twice since 1980; the first increase was effective in January 1981 and the second in October 1982. Past requests for rate increases have been discussed, and voted on, in meetings closed to the public. Both the President of the Pilots Association and a member of the shipping industry participated in, and voted on, the October 1982 rate increase. In addition, the Commission has no procedures for appealing rates (see p. 17).

An Audit Council survey of the six other southeastern states which regulate pilotage revealed that two states, Florida and Virginia, have formal procedures for setting rates. The other four states have no formal policies but consider operating expenses of the pilots and fees charged in other ports in setting rates. In all six states, meetings open to the public are either required or are common practice.

The Florida Board of Pilot Commissioners' rules and regulations require that pilots requesting a rate increase submit an application form and a financial statement. The statement must be prepared by a Certified Public Accountant

(CPA) and should include a profit and loss statement and a balance sheet. The board then investigates and verifies the information in the application, publishes public notice of the proposed rate increase and allows interested parties to respond to the rate request. The request is then considered by a rate making board composed of one pilot from a different port and four nonpilots. No individual with a direct vested interest in the rates may serve on the rate-making board.

In Virginia, the State Corporation Commission (SCC), equivalent to the South Carolina Public Service Commission, sets the rates for pilotage services. Rates are based on the operating expenses of the pilot, the pilotage rates in other ports, and maintenance and depreciation on properties used in pilotage. The SCC then establishes a fair rate of return on investment. The major advantage to this method of rate setting is that the SCC has a staff trained in rate setting and has no vested interest in pilotage fees. The South Carolina Public Service Commission, however, indicated that it could not presently assume responsibility for the Charleston Harbor Pilot Commission (see Appendix B).

In the Great Lakes, pilotage is regulated federally by the United States Coast Guard (USCG), since the Great Lakes border on Canada. The USCG procedure for setting rates is to verify and allow all legitimate expenses as documented by a CPA. In addition, the salary of a pilot is based on the

salary of an individual performing comparable work in the private sector.

In August 1982, the Commission of Pilotage for the Port of Charleston approved a basic rate increase of approximately 42%. In addition, the prices charged for extra services (such as shifting above or below bridges, docking without tugboats, etc.) were increased an average of 75%. The rate request was submitted by the President of the Pilots Association who is also, as required by statute, on the Commission. In addition, the Association President and a member of the shipping industry serving on the Commission voted on the rate request. No public notification was given of the proposed rate increase and the increase was discussed and voted on in a meeting closed to the public. The rate increase resulted in ten complaints registered with the Commission from shipping lines or agents (see p. 19). A Commission member stated to the Audit Council that in the future, rate hearings will be open to the public.

RECOMMENDATIONS

THE COMMISSION OF PILOTAGE FOR THE PORT OF CHARLESTON SHOULD PROMULGATE FORMAL PROCEDURES FOR SETTING RATES AND SHOULD HOLD PUBLIC RATE HEARINGS. FORMAL PROCEDURES SHOULD PRESCRIBE INFORMATION REQUIRED FROM THE ASSOCIATION AND SHOULD ESTABLISH RATE-SETTING JUSTIFICATION AND

CRITERIA. NOTIFICATION OF A PROPOSED RATE INCREASE SHOULD BE PLACED IN A NEWSPAPER OF GENERAL CIRCULATION AND ALL INTERESTED PARTIES REQUESTING ADVANCE NOTICE OF RATE HEARINGS SHOULD BE NOTIFIED.

THE GENERAL ASSEMBLY SHOULD CONSIDER AMENDING SECTION 54-15-290 OF THE SOUTH CAROLINA CODE OF LAWS TO REMOVE INDIVIDUALS WITH A VESTED INTEREST FROM VOTING ON RATE INCREASES.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

The Audit Council has reviewed the operation of the Charleston Commission of Pilotage and has determined that more opportunity for public input is needed. Statutory revisions would provide improved avenues for public complaints and appeals of Commission decisions, as discussed below.

Public Input

The Commission of Pilotage has not encouraged public participation. Although the Commission has approved two rate increases since 1980 (see p. 12) and has proposed legislative changes in the past two fiscal years, it has held no public hearings. The Commission does not publish public notices prior to its meetings. To announce meetings, the Commission sends memoranda to its members.

The Freedom of Information Act requires that all public bodies give written public notice of their meetings, (Section 30-4-80). In addition, Section 30-4-70 of the Act provides circumstances under which public bodies may hold closed meetings; the meetings of the Commission do not conform to the requirements set out in this section. All of the other six southeastern states regulating harbor pilots open meetings to the public, as required by statute or as a common practice. Additionally, five of the states (Florida, Georgia, Mississippi, North Carolina and Virginia) publish or post a public notice prior to each meeting.

The Commission's function is the regulation of the Charleston pilotage industry in the public's interest. Because the Commission has not made public announcements of its meetings or held public hearings, the public has had little opportunity to participate in Commission activities. Two Commission members told the Audit Council that public hearings will be held in the future.

RECOMMENDATIONS

THE COMMISSION OF PILOTAGE SHOULD ADOPT
PROCEDURES FOR PUBLIC ANNOUNCEMENT OF
COMMISSION MEETINGS.

Appeals, Complaints and Remedies

Section 54-15-10 et seq. of the South Carolina Code of Laws, which authorizes pilots and pilotage in the State, does not provide for remedy or appeal for the public or shipping lines in the case of disagreement with Commission actions. Authority to file complaints against the Commission is not provided, nor is a complaint process defined. Applicability of the Administrative Procedures Act to the Commission's rate-setting functions is unclear. Therefore, the decisions of the Commission have been made behind closed doors, with the only clear avenue for redress the seeking in court of injunctive relief.

The lack of statutory provision for complaint, appeal and remedy may be compared to the statutes authorizing the Public Service Commission, another State rate-setting body. Section 58-5-270 provides, in part, that written applications and complaints may be made by any public or private individual or corporation setting forth any act done, or omitted to be done, with respect to the provisions under which the Public Service Commission has jurisdiction, or is alleged to have jurisdiction. The Commission is authorized to institute inquiries (Section 58-5-280) and to

correct improper rates (Section 58-5-290). Section 58-5-340 provides that decisions of the Commission may be reviewed by the court of common pleas, and describes the hearing procedure; Section 58-5-360 provides the right to appeal to the Supreme Court.

Shipping lines and other interested parties have had no statutorily authorized mechanism for appealing rate increases. In addition, individuals who may have been denied apprenticeships, or who have had other complaints concerning Commission actions, have not had a statutorily authorized complaint process to follow. The statutes enabling the Commission should be amended such that the regulatory structure promotes accountability, fairness and public confidence.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING SECTION 54-15-10 ET SEQ.,
AUTHORIZING A COMPLAINT PROCEDURE AND
PROVIDING MEANS FOR APPEAL OF COMMISSION
DECISIONS.

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL, OR OTHER AGENCY OR ENTITY.

The Commission of Pilotage for the Port of Charleston does not duplicate the functions of any other State or local agency. However, both the United States Coast Guard (USCG) and the Commission license harbor pilots and investigate accidents involving pilots.

The USCG is the licensing authority for pilots who provide services for American enrolled ships engaged in coastwise trade. The Commission licenses individuals who provide services for ships engaged in foreign trade. Neither has the authority to suspend or revoke a license issued by the other. Currently, all 15 state-licensed pilots also hold a federal license.

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

The Audit Council reviewed the Commission complaint records from FY 79-80 to FY 82-83. The Commission has not maintained a complaint log or other record of complaints

received, action taken or resolution; nor has it developed policies and procedures to process complaints.

The Commission received ten complaints between September and November 1982. All of the complaints concerned the 1982 pilotage rate increase and were registered by shipping lines or agents (see p. 14). In addition, according to a Commission member, a complaint was made to the Commission in 1981 involving a denial for an apprenticeship. This complaint was not recorded and did not appear in Commission files.

Without formal procedures to document and resolve complaints, violations of the law may not be appropriately addressed, and the public may not receive adequate protection. To meet its responsibility to the public, the Commission should implement procedures to ensure that all complaints are handled in a thorough and systematic manner.

RECOMMENDATION

THE COMMISSION SHOULD DEVELOP FORMAL PROCEDURES TO HANDLE COMPLAINTS, INCLUDING A STANDARD REPORTING FORM, A CENTRAL FILE, AND A LOG TO RECORD ALL COMPLAINTS. THE LOG SHOULD INCLUDE THE FOLLOWING INFORMATION: COMPLAINANT, NATURE OF COMPLAINT, DATE OF COMPLAINT, MEANS OF CONTACT, ACTION TAKEN BY THE COMMISSION AND FOLLOW-UP.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

An Audit Council review of applicable State, federal and local statutes for the Commission of Pilotage for the Port of Charleston revealed two instances where the Commission is not in compliance with State law. These instances discussed below are in addition to the violations of the Freedom of Information Act discussed on page 16.

Examination Procedures

The Board of Examiners is not giving oral, written, and demonstrative examinations and is charging exam fees greater than those allowed by statute. According to Commission members, the pilot's license examination can be either oral or written, and the exam fee is \$20 per examiner. A past member of the Board of Examiners, who had participated in five (63%) of the eight exams given between FY 79-80 and FY 82-83, stated to the Audit Council that the exam was oral and the fee charged was \$40. (Two examiners were paid \$20 each.)

Section 54-15-60 of the South Carolina Code of Laws requires that all examinations be oral, written, and by demonstration. Section 54-15-80 requires that the applicant shall pay to the Board of Examiners a fee not to exceed \$25.

RECOMMENDATION

LICENSURE EXAMINATIONS SHOULD BE ORAL,
WRITTEN AND BY DEMONSTRATION.
EXAMINATION FEES SHOULD NOT EXCEED \$25.

APPENDICES

**COMMISSIONERS OF PILOTAGE
FOR THE PORT OF CHARLESTON
CHARLESTON, SOUTH CAROLINA**

April 18, 1985

Mr. George L. Schroeder, Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, S.C. 29201

RE: Sunset Review - Commissioners of Pilotage
for the Port of Charleston

Dear Sirs:

This is in response to the Audit Council Staff's revised report which was presented to us at your offices on March 27th at a meeting attended by John M. Settle, Chairman of the Charleston Pilotage Commission, Arthur Joye Jenkins, President of the Charleston Pilots Association, Whitemarsh S. Smith, III, past Commissioner, and T. Allen Legare and D. A. Brockinton, Jr., attorneys for the Charleston Pilots Association.

In responding to the proposed report, as revised, we shall address ourselves to the eight Sunset Questions, findings and Recommendations thereof in the same order as in the revised report.

BACKGROUND AND HISTORY - Page 1, et seq.

1. We have no comment on the foregoing, except to say that the final paragraph on page 2 should really read that the nine southern states, including Louisiana and Texas, all regulate harbor pilots.

SUNSET QUESTION (1) - Page 3, et seq.

2. We take issue with the report's statement on page 3 that harbor pilot fees account for "approximately 35% of major

port expenses". This is absurd and not in accord with the real situation. As we pointed out on page 3 in our response of January 23, 1985, to the Audit Council's initial report, actually pilotage charges for the Port of Charleston are less than 1% of a vessel's port costs. Major port costs are for stevedoring, provisions and supplies, wharfage, port charges, assessments and the like. Minor port costs involve docking, berthing and ship handling costs. Pilotage costs may involve 30-33% of ship handling costs but not 35% of all expenses nor even 35% of major port expenses. As the revised report correctly states on page 4, harbor pilot fees represent a small portion of the total cost of shipping goods, and add little to the price of consumer goods.

Pilotage in South Carolina, A Monopoly - Page 4, et seq.

3. We have no comment to make on the revised report's discussion of the legal status of pilotage in South Carolina, except to say that on page 4 thereof the report should really refer to the fact that the other eight southern states which regulate pilotage also limit the number of harbor pilots.

Apprenticeship Approval and Recommendation - Pages 5 and 6

4. Notwithstanding the revised report's concession on page 2 thereof that the scope of the Audit Council's review was limited to the functions of the Pilotage Commission and not those of the Association, a private organization, nevertheless the revised report proposes a statutory amendment on pages 5 and 6 for the sole reason that the Association "could potentially restrict entry into the profession of any

individual". We challenge the validity or merit of the revised report's recommendation.

As the revised report points out on page 6, entry into the occupation should be clearly related to safe and effective practice. The report also acknowledges that four of the six southeastern states which regulate pilotage require approval of an apprentice by a majority of the harbor pilots. This has been the tradition with the majority of the nine southern states regulating pilotage, and the Association system has worked successfully, effectively and safely in South Carolina and most of the other southern states for over a hundred years. The safety record of the Charleston harbor pilots has been outstanding, and the revised report points to nothing unrelated to safety factors. The revised report's speculation is no basis or justification for changing a successful and effective system. The fact that most of the southern state regulating pilotage provide for apprenticeship approval by a majority of the Association pilots attests to the merits of the system.

Moreover, the statute itself (Code Section 54-15-130) prohibits discrimination in the selection of pilots on account of race, etc. Furthermore, the apprenticeship program is not a subject of Audit Review. Rather, it is a proper function of the Association. Aside from the high and strict legal requirements for an apprenticeship, the professional judgment of the pilots themselves of a candidate's local knowledge, his habits, ability to assimilate, make rapid decisions, exercise good judgment and prudence, apply time and spatial

relationships and other hallmarks of competent pilotage is indispensable to the proper screening and selection of candidates for the requisite skills and capacity among eligible candidates.

Indeed, the United States Supreme Court in the case of Kotch, et al. v. Board of River Port Pilot Commissioners for the Port of New Orleans (1947) 330 U.S. 552, 562-563, recognizing that the profession of pilotage is a unique and highly personalized calling, upheld the statutory right of Louisiana pilots to select candidates with whom they must serve in the public interest, the object of state pilotage being to secure for the State and the port the safest and most efficiently operated pilotage system practicable. In the absence of any showing of any abuse of the present statutory system of apprenticeship approval or any real disservice to the public interest, the Audit Council's revised report, based only on its hypothetical conjecture, recommending a statutory amendment is not only unjustified but also beyond its authority and the scope of sunset review.

Accordingly, we strongly disagree with and denounce the revised report's Recommendation on page 6 to consider amending Code Section 54-14-100 to delete majority pilot and peer approval of apprentices. As we previously pointed out on page 6 of our response to the Audit Staff's initial report, it is not unreasonable or unfair in the public interest for the statute to require that a prospective pilot have the approval of the board of Commissioners and the approval of eight of the

fifteen pilots. The revised report only raises a hypothetical question, resorts to surmise and points to nothing of substance to support its recommendation. Indeed, it would be unreasonable and arbitrary to deny the majority of pilots any voice in the selection, or rejection, of a prospective apprentice or pilot as a matter of law, especially in a unique and highly dangerous profession where safety and personal efficiency are critical factors and the risks of disaster are enormous.

SUNSET QUESTION (2) AND RECOMMENDATION - Page 6, et seq.

5. We agree with the revised report that state regulation of pilotage has proven more advantageous than federal regulation, and with the report's Recommendation on page 9 that the Commission of Pilotage for the Port of Charleston should be continued pursuant to the Sunset Act, especially because the Commission performs an active, unique, useful and vital public service, accountable to the state and the port, without any financial cost to the taxpayers or the state.

SUNSET QUESTION (3) - NO RECOMMENDATION - Page 9, 21

6. The annual expenses of the Commissioners are nominal. However, in view of the need for more efficient record-keeping, public notices, a procedures manual and implementation of administrative efficiency of the agency under Sunset Question (4), perhaps the annual expenses of the Board of Commissioners will increase somewhat with additional filing, etc. and the Association has offered to defray such reasonable expenses of the Board.

SUNSET QUESTION (4) - Page 10, et seq.

Record Keeping, Filing System and Recommendation -
Page 10,11

We agree with the revised report's discussion and its Recommendation that the Commission should implement a system to ensure accurate filing of information related to its operation. This the Board of Commissioners intends to do.

Policies and Procedure Manual, and Recommendation -
Page 11

We agree with the revised report's discussion on this subject and its Recommendation that the Commission should maintain a Policies and Procedures Manual, which the Board of Commissioners intends to do.

Rate Setting Procedure - Page 12, et seq.

We challenge the revised report's statement that past requests for rate increases have been discussed and voted on in meetings "closed to the public." While public notice of the meetings was not published, it was a matter of common knowledge to the waterfront and shipping interests and the meetings were never closed. In fact, some members of the shipping industry were Commissioners and attended and voted. Traditionally, the majority of each Board of Commissioners has been composed of or chaired by knowledgeable waterfront individuals, including the Chairman of the South Carolina State Ports Authority, ex-officio, all of whose overriding concern is, and has been, for the best interest of the port and the State. However, there has in the past been no formal procedure for rate making

and we agree that the Commission should establish a formal rate making procedure and criteria, with notice to the public of the hearings and public hearings.

The revised report on page 14, implies that a 1982 42% rate increase was unjustified or exorbitant, but fails to mention that it was based on increased economic costs of doing business and providing the desired services, nor does it mention that the Commission adjusted the local rates commensurate with our competitive ports of Jacksonville, Wilmington and Savannah, which are still higher than the Charleston rates. Actually, the 1982 rate increase was a 12.5% increase from a 1981 base to a 1985 base, considering inflation and the cost of conducting business. The 75% rate increase in 1982 mentioned for shifting and docking without tugs was designed to discourage such maneuvers without tugs and, if still desired, to yield a payment commensurate with the risk involved and economically feasible, considering the cost of transportation involved and the previously nominal rate for such limited services. We note that the report mentions ten trade complaints of the basic rate increase of 1982 but neglects to mention that the Commission answered each letter and invited attendance at the next meeting, but none replied or attended.

Relative to the revised report's Recommendation on page 14 thereof, we agree that the Commission should and will set up formal procedures for setting rates, criteria for same, holding public hearings, and publishing notice thereof to the public

and all interested parties to afford an opportunity to attend and voice objections or input. We submit that the Commission has the power to implement the various Recommendations made by the revised report under Sunset Question (4), and it intends to do so.

The revised report further contends that no individual with a direct vested interest should serve on the rate-making board and suggests on page 13 that the Legislature should consider amending the pilotage statute to remove individuals with a vested interest from voting on rate increases. We disagree with this recommendation, and believe it would be foolhardy.

Section 54-15-40 of the statute provides for the appointment of pilotage commissioners for the port of Charleston and Section 54-15-290 provides for their rate making. The function of the Commission is complicated, specialized and calls for expertise in maritime and port business, in a field which is primarily commerce and economic and not consumer oriented. The membership of the Commission has traditionally involved knowledgeable and dedicated individuals representing broad interests related to the port, and its best interests including the Chairman of the South Carolina State Ports Authority, shipping interests and pilots, all of whom have vested interest in different ways. Their common and conflicting interests counteract each other and have produced fair decisions in the interest of the port. Since the Commission has been fair, responsible and accountable, the

present system should be preserved. We strongly disagree that some members should be precluded by law from voting their convictions based on the evidence and the merits. A comparison of the Charleston rates over the years with those of its competitive ports in other states attests to the fairness of the Commissioners' rate-making process. No statutory amendment is needed.

SUNSET QUESTION (5) AND RECOMMENDATION - Page 14, et seq.

Public Input - Page 16

We agree that public notice of Commission meetings should be made in accordance with the South Carolina Freedom of Information Act and that the Commission should and will adopt procedures for public announcement of such meetings in advance.

Appeals, Complaints, Remedies and Recommendations - Page 17, et seq.

The revised report discusses the alleged lack of statutory provision in the pilotage statute for handling appeals from, complaints of and grievances with Commission acts, decisions or rates. The report also compares such remedies to those provided by the Public Service Commission statute, thereby suggestive of an appropriate analogy. While the revised report states on page 13 that the Public Service Commission could not presently assume responsibility for the Charleston Pilotage Commission, it neglected to state that the Public Service Commission did not feel it had the expertise or time to be responsible for setting rates for a unique profession such as harbor pilotage.

We agree that aggrieved persons or parties should, and do, have a remedy from Commission rulings or actions. The Commission has authority to implement by its rules and regulations various steps and procedures for establishing rates, for rehearing such rates or objections thereto, and revising or otherwise changing schedules of rates or new rates to be scheduled. No amendment to the pilotage statute is necessary.

Any citizen with standing has a right to have a judicial review as an aggrieved citizen from an adverse ruling, action or rates of the Commission, either by appeal under the S. C. Administrative Procedures Act or by due process of law.

The Commission intends to implement administrative remedies and appeals by aggrieved persons by its regulations establishing steps and procedures for hearing and rehearing same and for ultimate judicial review therefrom under Section 1-23-380 of the Administrative Procedures Act, for rates or otherwise, which provides for judicial review by the Court of Common Pleas of final decisions of any state agency, board, commission, including but not restricted to rate making. (Code Section 1-23-310, et seq.)

Accordingly, we strongly disagree with the revised report's Recommendation on page 18 to consider amending the pilotage statute to provide a means of appeal from Commission decisions.

SUNSET QUESTION (6) - Page 19

No discussion is needed.

SUNSET QUESTION (7) AND RECOMMENDATION - Page 19, et seq.

The Commission agrees with the revised report's Recommendations on page 20, and intends to implement same with a procedures manual, complaint log and recording of actions taken.

SUNSET QUESTION (8) AND RECOMMENDATION - Page 21, et seq.

Examination Procedure

In the belief that the statute provided some flexibility in the method of giving examinations for licenses, traditionally the Examiners have given oral and demonstrative examinations rather than oral and written and by demonstration. The Commission has felt that this was a judgment call by the qualified examiners rather than a hidebound, inflexible requirement. However, if all three methods of examining a candidate are mandatory, the Commission, henceforth, will require in its Manual that some portions of the examination be by written questions and answers, as well as by oral examination and by demonstration.

In the past the practice has been to pay the examiners \$20.00 per examiner for conducting the examinations. If, indeed, the statutory fee should not exceed \$25.00, the Commission is prepared to provide in its Manual on the subject of examinations that the applicant pay such appropriate examination fee as the Commission may determine, not to exceed the total sum of \$25.00.

Mr. George L. Schroeder, Director
April 18, 1985

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This completes the comments of the Commissioners of Pilotage for the Port of Charleston on the Audit Council's revised report. Thanking you for your courtesies, we remain

Cordially yours,

COMMISSIONERS OF PILOTAGE FOR
THE PORT OF CHARLESTON

By: John M. Settle
John M. Settle, Chairman
158 Meeting Street
Charleston, SC 29401

FOR THE COMMISSION

Enclosures

cc: All Members of the Commission



**STATE OF SOUTH CAROLINA
THE PUBLIC SERVICE COMMISSION**

**P. O. DRAWER 11649
COLUMBIA, SOUTH CAROLINA 29211**

September 4, 1984

Mr. George L. Schroeder, Director
Legislative Audit Council
State of South Carolina
620 Bankers Trust Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

This will acknowledge receipt of your letter of August 27, 1984, regarding your review of the Commission of Pilotage for the Port of Charleston.

In response to your question as to whether it would be feasible to transfer the rate making authority for setting rates of harbor pilots for bringing ships in and out of port to this Commission, we feel that this Commission's staff does not have the expertise or time to assume such responsibility.

Yours very truly,

A handwritten signature in cursive script that reads "James H. Still".

James H. Still
Executive Director

JHS:as